

## UNITED STATES DISTRICT COURT

for the

\_\_\_\_Middle District of Pennsylvania\_\_\_\_

United States of America )

v. )

ERIC PRESTON )

) Case No: 1:00-CR-80

) USM No: \_\_\_\_\_

Date of Previous Judgment: 11/7/2000 ) Heidi Freese

(Use Date of Last Amended Judgment if Applicable) ) Defendant's Attorney

**Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)**

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of \_\_\_\_\_ months is reduced to \_\_\_\_\_.

**I. COURT DETERMINATION OF GUIDELINE RANGE** (Prior to Any Departures)

Previous Offense Level: \_\_\_\_\_

Amended Offense Level: \_\_\_\_\_

Criminal History Category: \_\_\_\_\_

Criminal History Category: \_\_\_\_\_

Previous Guideline Range: \_\_\_\_\_ to \_\_\_\_\_ months

Amended Guideline Range: \_\_\_\_\_ to \_\_\_\_\_ months

**II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE**

- ☐ The reduced sentence is within the amended guideline range.
- ☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.

**III. ADDITIONAL COMMENTS**


Because the Court determined Defendant's sentence according to the career-offender guideline, USSG 4B1.1, and there is no "listed amendment" to the United States Sentencing Guidelines, no sentence reduction is authorized pursuant to 18 U.S.C. § 3582(c) and USSG § 1B1.10. *See United States v. Rivera*, 553 F. Supp. 2d 527, 530 n.2 (E.D. Pa. 2008) (casting doubt as to whether a court may reduce a sentence pursuant to "an amendment changing a guidelines range that is not applicable to the defendant but is considered for comparison purposes.")

Except as provided above, all provisions of the judgment dated 11/7/2000 shall remain in effect.

IT IS SO ORDERED.

Order Date: \_\_\_\_\_

7/21/08

  
 Judge's signature

Effective Date: \_\_\_\_\_

(if different from order date)

Yvette Kane, Chief Judge

Printed name and title